

ESKDALE CENTER  
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October 1, 2010

Mr. Jason King, P.E., Nevada State Engineer  
Division of Water Resources  
901 South Stewart St. Suite 2002  
Carson City, Nevada 89701

**Comments on the Procedures for SNWA Applications in Spring Valley**

Dear Mr. King:

EskDale Center appreciates the opportunity to consider the State Engineer's proposed approach and schedule for processing the SNWA water right applications in eastern Nevada in light of the Nevada Supreme Court's ruling and subsequent clarification.

**Consolidation of applications and protests**

EskDale Center was not an original protestant to the 1989 applications by LLVWD in Spring Valley, but we did file protests against the SNWA refiled applications earlier this year. At this time we are not sure what our standing is on these protests based on your interpretation of these protests as "moot".

The refiled applications are still shown on the State Engineer's water rights database as active, as are the original applications. Some resolution of the status of these applications is necessary prior to any further actions by the State Engineer.

We recommend the consolidation of the original protests and those to the refiled applications for several reasons:

1. Acceptance of the protests and related fees *de facto* validates the refiled duplicate applications by SNWA. Since Nevada statutes do not allow duplicate filings for water, the State Engineer should have either held the protests in abeyance or voided the original filings. By processing the refiled applications and accepting the protests and fees, the State Engineer has invited further litigation on both the due process and legal procedures grounds.
2. Disallowing these protests denies due process again. Both SNWA and the protestants are subject to a form of double jeopardy in the area of fees, which are far more significant to the protestants than to SNWA. The State Engineer has accepted monies in protest fees and will provide no services related to those protests. At a minimum the fees accepted for protests to the refiled applications should be refunded or allowed to be applied to protests when the original applications are republished.
3. The refiled applications were duplicative of the originals. Therefore, the applicant is not disadvantaged by consolidation.
4. Nevada statutes do not prevent the State Engineer from consolidating these protests. Your discretion is very wide in the area of hearings.
5. The rush to meet the one-year time limitations will create further issues for litigation.
6. Failure to consolidate will result in increased additional costs for the applicant, the State of Nevada, and the protestants. Consolidation is the most cost and time effective approach.

Consolidation can resolve the issues related to the handling of the refiled applications and the associated protests and fees. Failure to address these issues prior to republication will likely result in further litigation and delay in consideration of the applications.

## **Republication**

As noted above, the issues related to consolidation must be resolved before republication. Applications should be published in the Millard County Chronicle as well as the Ely Times, in fairness to Utah residents of Snake Valley, whose local newspaper is not a Nevada publication. The protest fees accepted for the refiled applications could most profitably be used to ensure that all affected and eligible protestants are notified, particularly in light of the due process issues which required the rehearing of these applications.

Your Information Statement of August 19, 2010 notes in the Background section that part of this problem arose ***“because the applications were not properly postponed according to the 1989 version of NRS...”***. This suggests that there was and is a proper method of postponement which could be applied in favor of ensuring a process which protects and respects due process for all protestants.

## **Schedule for Hearings**

Scheduling hearings for the primary agricultural season is patently unfair to rural agricultural protestants, whose primary interest in this issue is the water required for an agricultural economy. Many of the protestants, including EskDale Center, will be disadvantaged by this schedule.

Again in your informational letter you state that the one year limitation imposed by statute holds ***“unless the matter is postponed using specific statutory criteria.”*** It appears that the State Engineer has *decided* that there will not be a postponement, not that one is not possible. We encourage the State Engineer to explore all possibilities which provide more flexible scheduling for the hearings which so vitally impact agricultural producers.

EskDale Center requests that the hearings be scheduled to begin no earlier than September, 2011.

## **Conclusion**

The applications and protests for underground water rights in the valleys of eastern Nevada have created a very contentious atmosphere. The State Engineer is both the judge and the mediator for the applicant and the protestants. Taking a hard, narrow line in implementing an interpretation of the court rulings may dispose of the issue in the near term, but it may also, just as in the handling of the original applications, create a larger problem down the road.

EskDale Center urges the State Engineer to explore any and all approaches which provide the most equitable process within the limits of your full statutory authority and latitude. Please consider the Law of Unintended Consequences as you follow the laws of the State of Nevada.

Thank you for your consideration of these issues.

Sincerely,

EskDale Center  
Jerald Anderson, Representative